

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7253 OF 2019

Shri. Suneel Zende

....Petitioner

v/s.

Rajib K. Sayani

.... Respondent

Mr. Tejash Dande a/w. Mr. Bharat Gadhvi i/b. Tejash Dande
and Associates for the Petitioner.

Mr. Ashutosh Gole a/w. Mr. S.C. Wakankar for the Respondent.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 01st APRIL, 2021.

P. C. :-

. The Petitioner herein has challenged the order dated 25/09/2017 and 06/04/2018 passed by learned 6th Joint Civil Judge, Senior Division, Pune in Special Civil Suit No.178/2015. By the impugned order, learned C.J.S.D has rejected the prayer of the Petitioner to call for the Record and Proceedings of Regular Civil Suit No.27/2008 and to dispose of the Suit based on evidence recorded in the earlier suit.

2. The Petitioner herein who was the plaintiff in Regular Civil Suit No.27/2008 filed before Civil Judge, Senior Division, Pune which was decreed on 31/10/2011. In an Appeal filed by the Respondent –

Defendant, both parties filed purshis and consented for return of the plaint under Order 7 Rule 10 of the CPC for presentation to the proper Court having jurisdiction. Accordingly, the plaint was returned and has been presented before the Court of Civil Judge, Senior Division and was registered as Special Civil Suit No.178/2015. The plaintiff filed Application for calling for the records of Regular Civil Suit No.27/2008 and to dispose of the Suit on the basis of the same evidence recorded by C.J.S.D., Pune prior to return of the Plaint.

3. In ***EXL Careers and anr. v/s. Frankfinn Aviation Services Private Limited*** reported in ***(2020) 12 SCC 667***, the question of law which was referred to Larger Bench of the Apex Court was if a plaint is returned under Order 7 Rules 10 and 10-A of the Civil Procedure Code, 1908 for presentation in the Court in which it should have been instituted, whether the suit shall proceed *de novo* or will it continue from the stage where it was pending before the Court at the time of returning of the plaint. While answering the said question of law, the Hon'ble Apex Court has held thus :-

“ 14. That brings us to the order of the reference to be answered by us. In Joginder Tuli (supra) the original court lost jurisdiction by reason of the amendment of the plaint. The Trial Court directed it to be returned for presentation before the District

Court. This Court observed as follows :-

“5. ... Normally, when the plaint is directed to be returned for presentation to the proper court perhaps it has to start from the beginning but in this case, since the evidence was already adduced by the parties, the matter was tried accordingly. The High Court had directed to proceed from that stage at which the suit stood transferred. We find no illegality in the order passed by the High Court warranting interference.”

To our mind, the observations are very clear that the suit has to proceed afresh before the proper court. The directions came to be made more in the peculiar facts of the case in exercise of the discretionary jurisdiction under Article 136 of the Constitution. We may also notice that it does not take into consideration any earlier judgments including Amar Chand Inani vs. The Union of India by a Bench of three Honourable Judges. There is no discussion of the law either and therefore it has no precedential value as laying down any law.

15. Modern Construction, referred to the consistent position in law by reference to Ramdutt Ramkissen Dass vs. E.D. Sassoon & Co., Amar Chand Inani vs. The Union of India, Hanamanthappa vs. Chandrashekharappa, (1997) 9 SCC 688, Harshad Chimanlal Modi (II) and after also noticing Joginder Tuli, arrived at the conclusion as follows :-

“17. Thus, in view of the above, the law on the issue can be summarized to the effect that if the court where the suit is instituted, is of the view that it has no jurisdiction, the plaint is to be returned in view of

the provisions of Order 7 Rule 10 CPC and the plaintiff can present it before the court having competent jurisdiction. In such a factual matrix, the plaintiff is entitled to exclude the period during which he prosecuted the case before the court having no jurisdiction in view of the provisions of Section 14 of the Limitation Act, and may also seek adjustment of court fee paid in that court. However, after presentation before the court of competent jurisdiction, the plaint is to be considered as a fresh plaint and the trial is to be conducted de novo even if it stood concluded before the court having no competence to try the same.”

Joginder Tuli was also noticed in Harshad Chimanlal Modi (II) (supra) but distinguished on its own facts.

16. We find no contradiction in the law as laid down in Modern Construction pronounced after consideration of the law and precedents requiring reconsideration in view of any conflict with Joginder Tuli. Modern Construction lays down the correct law. We answer the reference accordingly. ”

4. In the light of the above settled position, the impugned order does not warrant any interference. Hence, the Petition is dismissed.

5. It is stated that the parties are litigating since 2008. The Petitioner is about 67 years of age and the Respondent – Defendant is in his 80's. Considering these facts, the learned Judge is requested to

dispose of the Suit as expeditiously as possible and in any event, within a period of two years from the date of the order.

(SMT. ANUJA PRABHUDESSAI, J.)